IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4066 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MALVIKABEN CHIRAYU AMIN & 1 - Petitioner(s)
Versus
NILOFER JEHANGIRJI PATWA - Respondent(s)

==========

Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1 - 2.MR NK MAJMUDAR for Petitioner(s) : 1 - 2.
MR BS PATEL for Respondent(s) : 1,
MRS RANJAN B PATEL for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA
Date : 12/04/2006

ORAL JUDGMENT

Rule. Mr. BS Patel, learned advocate for the respondent waives service of rule.

2. In this petition the petitioners have

challenged order dated 18th February, 2005 passed by the Ld. Joint District Judge, Fast Track Court No. 7, Vadodara, below application at Exh. 50 in Civil Misc. Appeal No. 260 of 1999. By the said order the Ld. Judge has directed the parties that the contempt proceedings which are pending in the said Court and which are filed by both i.e. petitioner and respondent against each other alleging the commission of breach of the interim relief granted by the Court be decided first and thereafter the appeal to be finally heard.

3. I have heard the learned advocates for the parties. It is submitted by Mr. AR Majmudar, learned advocate for the petitioners that if this course is adopted by the Court, there will be inordinate delay in disposal of the appeal, because the contempt proceedings would consume considerable time before they are disposed of. He has further submitted that the respondent, who is running a gymnasium named 'Hercules Gymnasium' will be in possession of the suit property till such time the appeal is disposed

of. That cannot be permitted since his possession of the suit property is unauthorized.

3.1. As against that, Mr. BS Patel, learned advocate for the respondent has submitted that the course adopted by the appellate Court is just and proper and no prejudice is likely to be caused to either party on account of it. It is the submission of Mr. Patel that it is the petitioners who have given the premises on rent to the respondent and his possession is absolutely legal and authorized.

4. I have carefully considered the submissions of the learned counsels and I have also perused the record of this petition and in particular the impugned order. The record shows that the proceedings are quite old. The appeal is of the year 1999. In view of the same, both these proceedings, namely the contempt proceedings as well as the appeal are required to be disposed of expeditiously. So far the contention of the learned counsels on merits are concerned, at this stage, I am not required to deal

with and decide them. It is for the appellate Court to do so. However, considering the fact that both these proceedings are now required to be heard and disposed of expeditiously, I direct the Ld. Judge to hear the contempt proceedings as well as the appeal and dispose them of on or before 31st July, 2006. Whether to hear the appeal and the contempt proceedings together will be the discretion of the said Court.

It is made clear that this order is passed without entering into the merits of the case as already stated above. Further it is also clarified that the Ld. Judge will exercise his discretion without being influenced by the order of this Court.

In view of the aforesaid directions, this petition is required to be granted. Hence, the impugned order is quashed and set aside. Rule made absolute with no order as to costs.

[Akshay H Mehta, J.]

* Pansala.